

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

8

9 Debtor.

10 - - - - - x

11 Adv. Case No. 23-01168-shl

12 - - - - - x

13 GENESIS GLOBAL CAPITAL, LLC,

14 Plaintiff,

15 v.

16 DIGITAL CURRENCY GROUP, INC.,

17 Defendant.

18 - - - - - x

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1 Adv. Case No. 23-01169-shl

2 - - - - - x

3 GENESIS GLOBAL CAPITAL, LLC,

4 Plaintiff,

5 v.

6 DCG INTERNATIONAL INVESTMENTS LTD.,

7 Defendant.

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11 United States Bankruptcy Court

12 300 Quarropas Street

13 White Plains, NY 10601-4140

14

15 Thursday, December 21, 2023

16 2:12 PM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ALIANNA PERSAUD

1 HEARING re Doc. #1057 Notice of Agenda

3 HEARING re Status Conference Regarding Pro se Objections

5 HEARING re Adversary Proceeding 23-01168-shl Genesis Global
6 Capital, LLC v. Digital Currency Group, Inc.

7 Doc. #9 Debtor's Motion for Entry of (I) Consent
8 Judgment Against the DCG Parties and (II) Order
9 Authorizing, to the extent necessary, GGC to Take
10 Actions in Furtherance of the Partial Repayment
11 Agreement Pursuant to Sections 105(a) and 363(b) of the
12 Bankruptcy Code, or, in the alternative, Bankruptcy
13 Rule 9019(a)

15 HEARING re Adversary Proceeding 23-01169-shl Genesis Global
16 Capital, LLC v. DCG International Investments Ltd.

17 Doc. #11 Debtor's Motion for Entry of (I) Consent
18 Judgment Against the DCG Parties and (II) Order
19 Authorizing, to the extent necessary, GGC to Take
20 Actions in Furtherance of the Partial Repayment
21 Agreement Pursuant to Sections 105(a) and 363(b) of the
22 Bankruptcy Code, or, in the alternative, Bankruptcy
23 Rule 9019(a)

25 Transcribed by: Sonya Ledanski Hyde

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14 BY: TALIA L. HELFRICK

1 P R O C E E D I N G S

2 THE COURT: Good afternoon. This is Judge Sean
3 Lane, in the United States Bankruptcy Court for the Southern
4 District of New York.

5 We're here for a 2:00 hearing in Genesis Global
6 Holdco LLC, a Chapter 11 case. So we'll start, as we always
7 do, with appearances. And so, starting with the debtors.

8 MR. O'NEAL: Good afternoon, Your Honor. Sean
9 O'Neal, Cleary Gottlieb, on behalf of the debtors.

10 THE COURT: All right. Good afternoon. And on
11 behalf of the Official Committee of Unsecured Creditors?

12 MR. ABELSON: Good Afternoon, Your Honor. Phil
13 Abelson, White & Case, on behalf of the official committee.
14 With me today is my partner, Chris Shore.

15 THE COURT: All right. Good afternoon. On behalf
16 of the ad hoc group?

17 MR. SAZANT: Good afternoon, Your Honor. Jordan
18 Sazant, of Proskauer Rose, on behalf of the ad hoc group.

19 THE COURT: Good afternoon. On behalf of Digital
20 Currency Group?

21 MR. SAFERSTEIN: Good Afternoon, Your Honor.
22 Jeffrey Saferstein, from Weil Gotschal & Manges, on behalf
23 of Digital Currency Group.

24 THE COURT: Good afternoon. And on behalf of
25 Gemini Trust Company?

1 MS. HELFRICK: Good Afternoon, Your Honor. Talia
2 Helfrick, Hughes Hubbard & Reed, on behalf of Gemini Trust
3 Company.

4 THE COURT: All right. Good afternoon. And as is
5 always the circumstance with this case, or these cases,
6 there are several pages worth of potential appearances, and
7 I know a lot of folks are here to listen in. So at this
8 point, rather than guess, I will simply ask if there's
9 anyone else who needs to make an appearance for purposes of
10 today's hearing.

11 All right, hearing no responses, I will turn it
12 over to the debtors, noting that we have an agenda for
13 today's proceeding. And I think we also have another matter
14 that I think was probably not on the agenda originally, at
15 least, in terms of something that was filed by an individual
16 creditor. But we'll deal with that in the fullness of time.
17 So, counsel, take it away.

18 MR. O'NEAL: Sure. Your Honor, Sean O'Neal, on
19 behalf of the debtors, Cleary Gottlieb Steen & Hamilton.

20 I think really today we only have one item on the
21 agenda, and that is the motion concerning the partial
22 repayment agreement. And I will walk you through that here
23 in just a moment. We filed two motions in the adversary
24 proceedings, Docket Numbers 9 and 10. Those motions seek
25 approval of entry of a consent judgment against the DCG

1 parties and an order authorizing the debtors, to the extent
2 necessary, to take actions and furtherance of the partial
3 repayment agreement. We have received no objections to the
4 motions. And, Your Honor, I am hearing some background
5 noise. I'm not sure if that's in the courtroom or outside
6 of the courtroom. I hope it's not too distracting for you.

7 THE COURT: I am not hearing any background noise,
8 so from my point of view, things are okay. I'm not sure if
9 that situation is shared by others. Anybody else want to
10 chime in?

11 MR. O'NEAL: Okay. I think we're fine, Your
12 Honor.

13 THE COURT: All right.

14 MR. O'NEAL: And so there were no objections
15 filed. So I think this should just be a short presentation.

16 I'd like to begin by moving into evidence the
17 supporting declaration of Thomas Conheeney. He is a member
18 of the special committee, and he was responsible for
19 participating and leading the negotiations with respect to
20 the partial repayment agreement. Mr. Conheeney is in the
21 virtual courtroom today. But with that, I would just move
22 for his admission or for the admission of his declaration
23 into evidence.

24 THE COURT: All right. Thank you very much. Any
25 party wish to be heard on that request to move into evidence

1 his declaration? All right. Hearing no response, I saw no
2 objection on the docket, I'm happy to receive that
3 declaration as evidence in these proceedings today.

4 MR. O'NEAL: Thank you, Your Honor. Because there
5 were no objections filed, I do not plan on spending a lot of
6 time on argument. But I do want to use this opportunity to
7 explain the partial repayment agreement, to describe the key
8 terms, and to describe really the context of the partial
9 repayment agreement and particularly the payments that we
10 have received and the payments we expect to receive. We
11 know that there's a lot of people and creditors who listen
12 to these hearings, and so this is a good opportunity for us
13 to share information with the creditor constituencies in a
14 transparent manner. So, and of course, Your Honor, if you
15 have any questions, do feel free to interject.

16 But let me first just describe kind of at a very
17 high level the key terms of the partial repayment agreement.
18 And recall, too, that this is an amendment. We originally
19 entered into the partial repayment agreement in September,
20 and now we have amended it because we had the right to
21 terminate it earlier a few weeks ago. And rather than
22 terminate it, we continued to have negotiations and believe
23 we achieved a fair result.

24 Under the terms of the partial repayment
25 agreement, amended or amendment, we received \$35 million in

1 cash, or in bitcoin, so 35 million in value. And then we
2 also received \$65 million in value, cash and coin from the
3 sale of CoinDesk.

4 In addition, the partial repayment agreement
5 provides for a monthly cash sweep. That cash sweep is equal
6 to 50 percent of the dividends paid to DCG from Grayscale
7 above \$10 million. So just to give an example, if the
8 dividend is \$40 million, the cash sweep, or the cash and
9 coin sweep, I should say, that we would get would be equal
10 to \$15 million. \$40 million. You take out the ten, that
11 leads you with 30 and then you have 50/50 split. Last
12 month, in December, that payment was equal to approximately
13 --

14 THE COURT: Hold on for one second, Counsel. I
15 have been told by chambers that, in fact, there is noise
16 coming from the courtroom. Now, I'm sitting in the
17 courtroom. It's not audible to me. So it is a classic
18 example of ghosts in the machine. So what I think we may do
19 is we may disconnect and reconnect just to see if it's
20 coming from here. I don't want people to have to sit
21 through that. That's not a very good holiday present. So
22 if people would indulge us for about 90 seconds.

23 MR. O'NEAL: Certainly.

24 THE COURT: We'll disconnect and reconnect. I'm
25 very sorry to interrupt your presentation, Mr. O'Neal, but I

1 figured, again, I couldn't hear it. But you're spot on. So
2 give me about 60 to 90 seconds to do that, and I'll be right
3 back.

4 MR. O'NEAL: Certainly. Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 MR. O'NEAL: In addition, we received \$65 million
7 in proceeds from the sale of CoinDesk. In addition, there
8 is a monthly sweep. That sweep is based on dividends that
9 DCG receives from Grayscale. It's equal to 50 percent of
10 the dividends paid above \$10 million. So, hypothetical
11 example, if the dividend is \$40 million, the cash sweep
12 would be \$15 million. You take the \$40 million, take out
13 the \$10 million, which leads you to \$30 million, and you
14 divide it by two, and that's the amount that is paid to the
15 debtors pursuant to the cash and coin sweep. Just by way of
16 example, last month, that was \$17.5 million in value that
17 was paid.

18 In addition, as part of the amendment, we obtained
19 a pledge of certain ETH Trust shares and ETH Classic Trust
20 shares. As of 12/12/23, those were valued at approximately
21 \$114 million. And importantly, under the amendment, all
22 amounts sought under the turnover actions must be paid by no
23 later than April 1st.

24 And then, lastly, I would just say a key term of
25 the amendment is the entry of a consent judgment, which

1 provides that all amounts are due and owing unappealable
2 that were sought in the turnover action must be paid
3 immediately. That consent order would be entered into
4 today, but then we would actually forbear from exercising
5 rights under that consent order or judgment unless there is
6 a default under the partial repayment agreement. So it
7 gives us protection that in the event that DCG were to stop
8 making payments, then we would have an immediate judgment
9 that we could begin to execute on and we would not have to
10 delay.

11 Your Honor, this is built in large part on the
12 concept of a confession of judgment that is common in many
13 jurisdictions, though it's something that we have kind of
14 fashioned on our own and applied it for bankruptcy purposes.

15 So that is really the key terms of the partial
16 repayment agreement amendment. And what I'd like to do,
17 Your Honor, is since we have many creditors on the line, in
18 the interest of transparency, I would like to describe what
19 payments have been received already and what we expect to be
20 received in the near term.

21 THE COURT: Please.

22 MR. O'NEAL: Yes. Thank you. And what's
23 interesting about this is actually we've been getting
24 payments under this without court order. The creditors'
25 committee and the ad hoc group asked us to seek court

1 approval. We don't believe that court approval is
2 necessary, but nonetheless, we are seeking court approval to
3 the extent necessary. But even before court approval has
4 been had, payments have been made. You may recall that
5 originally about 630 million was due on May 9th, 10th and
6 11th of 2023. That amount included about \$500 million in
7 dollar loans and about what was then valued at around 130
8 million in BTC loans. That is denominated in BTC, not
9 dollar.

10 As you can imagine, when you have BTC loans, which
11 is true of many situations where we're actually the
12 borrower, when you are dealing with BTC loans, the value
13 fluctuates with the value of BTC. You will recall from
14 prior hearings that when we filed the case, the price of BTC
15 was approximately \$19,000, and today it's just under
16 \$44,000. That gives you some idea of the market movement.

17 To date, we have received about 381.2 million in
18 payments under the partial repayment agreement. That
19 includes about \$296 million in cash and about 85.1 million
20 in BTC value. Of this amount, about 33 million is in
21 regular interest on both loans. And I think sometimes
22 people gloss over this. We've actually -- yes, we forbore
23 from exercising rights, but in exchange we were getting
24 interest. So we've received about 33.2 million in regular
25 interest and about 3.3 million in default interest. Now,

1 that default interest, which we call late fees under our
2 documentation, is paid only on the BTC loans because the
3 dollar loans, there is a dispute about the payment of
4 default interest under the dollar loans. I won't get into
5 that dispute. All rights are reserved on that particular
6 point. And as Your Honor knows, in a turnover action, you
7 can only seek undisputed amounts.

8 In addition to the 381 million in value that we've
9 received in payments, we received a pledge, and that pledge
10 has been fully perfected. As we have noted on the court
11 docket in the adversary proceeding, that pledge has been
12 fully perfected. As of 12/12/23, that value was about \$114
13 million. And that's the ETH Trust and ETH Classic Trust
14 shares that I mentioned previously.

15 In addition, Your Honor, based on current prices
16 and a fair amount of assumptions in terms of what the future
17 cash flows would be, just plugging in just a number, just to
18 plug in a number, say \$15 million, we anticipate that 165
19 million would be due and owing as of April 1st in the event
20 that prices don't change. Obviously, when prices change,
21 that will adjust the amount. But just to give you an idea
22 of the quantum that we anticipate will be due between now
23 and April 1, it's about \$164 million. Of course, that'll be
24 reduced by any proceeds from sales and other items, but also
25 by the cash sweep, the monthly cash sweep, which you could

1 probably estimate to be anywhere between 15 and 20 million,
2 or maybe more or less, over the next few months.

3 This all excludes late fees on the dollar loans.
4 That's because there is a dispute about that. Just to give
5 people an idea of the quantum of that dispute, we would say
6 that about 25 million has accrued, and that through April
7 1st, about 32.5 million, including that 25 million accrual,
8 will have accrued.

9 So, Your Honor, that is basically the key terms. I
10 should note, too, that one of the things that we did is
11 there was a forbearance fee that was paid back when we
12 originally did the PRA. That was initially going to be just
13 kind of a prepayment of debt that was matured or going to
14 mature, and we've now just made that a straight up
15 forbearance fee. So it's not a credit to the amounts due.

16 So, Your Honor, I just wanted to really just walk
17 people through that, because I think it's not always clear
18 when you look at everything that we filed in the case, each
19 time we get a payment, we file a pleading so that people are
20 aware of it. But then you have to convert it to, if it's
21 BTC payment, you have to convert it to the dollar amount.
22 So we thought it just would be helpful for people to
23 understand what's been paid and what we anticipate being
24 paid. Bottom line is about 381.2 million has been paid, and
25 we would anticipate that 164 million will be paid between

1 now and April 1.

2 And, Your Honor, I think the only other thing I
3 would say, there is a statement on the record that I would
4 like to make. This is an agreed-upon statement by DCG and
5 the creditors' committee, and it concerns the tax-sharing
6 agreement. So I'm just going to read this into the record
7 as an agreed-upon statement.

8 DCG has agreed to engage in good-faith discussions
9 with the debtors, the creditors' committee and the ad hoc
10 group advisors regarding entry into a mutually acceptable
11 tax-sharing agreement to become effective on the effective
12 date of what we call the no-deal plan. This is subject to a
13 full reservation of DCG's rights with respect to the content
14 of any tax-sharing agreement and the right to not enter into
15 a tax-sharing agreement if the terms are not acceptable to
16 DCG.

17 We just wanted to put that on the record. We are
18 going to be working on, and we currently are working on the
19 form of that tax-sharing agreement subject to a reservation
20 of rights by all parties.

21 With that, Your Honor, I have nothing further to
22 add. And we would request that Your Honor enter both the
23 consent judgment and then the order authorizing the debtors
24 to take actions and furtherance of the partial repayment
25 agreement. There's actually four different orders because

1 there's two different adversary proceedings.

2 THE COURT: All right. Thank you very much. So
3 let me circle the virtual room. So, starting with DCG,
4 anything to put on the record in connection with this
5 motion?

6 MR. SAFERSTEIN: Nothing to add, Your Honor.
7 Thank you.

8 THE COURT: All right. Thank you. And as to the
9 Official Committee of Unsecured Creditors?

10 MR. ABELSON: Nothing to add, Your Honor. We did
11 file a statement and reservation of rights. I think we made
12 our views clear and known. From our perspective, the
13 consent judgment was incredibly important to our view that,
14 at the end of the day, this did not fall below the range of
15 reasonableness. So we have nothing more to add, Your Honor.

16 THE COURT: All right. Thank you very much. And
17 with that, I'll throw it open to any other party who might
18 wish to be heard in connection with this motion that is on
19 for today.

20 All right. Hearing no party in the virtual
21 courtroom and seeing no objection on the docket, I'm happy
22 to grant the debtors' motion that provides for the entry of
23 the consent judgment, as well as an order authorizing
24 actions in furtherance of the partial repayment agreement,
25 as amended, and finding that it's appropriate under the

1 facts and circumstances of the case and applicable law, and
2 helps to move the case forward on an issue that has been the
3 subject of much discussion since the beginning of the case.

4 And so there will be, as mentioned, more than one
5 order given the existence of the two adversary proceedings,
6 and we will get those orders entered promptly.

7 And so with that, let me turn the podium back to
8 Mr. O'Neal for anything else that might be on your agenda
9 before I raise the issue that is on my mind for purposes of
10 today.

11 MR. O'NEAL: Certainly, Your Honor. We have no
12 further items on the agenda. So from our perspective,
13 there's nothing further on the agenda.

14 THE COURT: All right. Thank you very much. So
15 let me dive into the issue that I wanted to discuss. So we
16 received earlier this week an objection from what was
17 identified as a Gemini EARN BTC denominated and ETH
18 denominated creditor, and it was filed to the disclosure
19 statement and a motion to extend the voting period.

20 With that objection that was sent to chambers was
21 a form that looked very familiar, which was the consent form
22 that's been much discussed among the parties and I believe
23 is the subject of a presentment date of tomorrow. And that
24 is the consent form that was proposed and worked, the
25 results of communications and consultation among interested

1 parties in this case about what to do when an interested
2 party, an individual creditor, might want to file something
3 in the case.

4 And if you remember the backdrop to all this,
5 which is there was a sealing motion seeking to protect the
6 identifying information of individual creditors was the
7 subject of an opinion by this court where I essentially
8 granted that motion in large part. And so for purposes of
9 the consent form, it was important to understand what that
10 decision did and what it didn't do.

11 What it did was keep out of the public record the
12 identity of individual creditors to the extent those folks
13 essentially were sitting in the sideline. They may have
14 been represented by counsel as part of the Official
15 Committee of Unsecured Creditors or particular ad hoc group,
16 but they weren't individually participating, except to the
17 extent that their information would ordinarily get put out
18 into the world by virtue of various matrix and other things
19 that would be filed in connection with the case.

20 What the decision didn't do, and I think made a
21 point of noting, is that like the FTX case, that the
22 decision didn't affect people who essentially voluntarily
23 decided to throw their hat in the ring, meaning that if you
24 wanted to participate as a member of the Official Committee
25 of Unsecured Creditors, you are sort of voluntarily deciding

1 to be involved. And because we don't do litigation by sort
2 of ambush or in an anonymous way, that that meant being
3 identified.

4 And what the consent form did was sort of play
5 that concept forward to say that, just so everybody was
6 clear that there were two boxes on the consent form saying,
7 file this on the docket or don't file this on the docket.
8 And it made clear to say, hey, I want to file something on
9 the court docket, and I understand that my information will
10 be publicly available or there was a box that do not file
11 this on the docket and your information would not be
12 available on the docket. And it was, again, to try to
13 memorialize and play forward this notion about protecting
14 folks' information to the fullest extent possible. But that
15 also included the notion that if you want to voluntarily
16 participate in the case, that would mean making your
17 information available under the sort of the rules of
18 engagement, I guess, for lack of a better term.

19 So we received in chambers this objection,
20 together with this filled out consent form from this
21 individual that checked the file on the docket box. And my
22 courtroom deputy then took the following step, which is to
23 put that all on the docket. And while I don't think we'd
24 had a discussion about whether the consent form itself would
25 go on the docket, I think the notion would makes perfect

1 sense to me because it makes a public record so that people
2 in the clerk's office in the court don't have to guess as to
3 whether something should be on the docket or not. And it
4 memorializes that process.

5 Almost immediately, I think we got several
6 communications from folks saying, please remove that from
7 the docket. It can't be on the docket. There was no intent
8 to do this, that or the other thing, to put this information
9 on the public docket. And so to the extent that someone
10 filled out this form and checked file this on the docket,
11 and my name and any contact information included in the
12 written communication will be publicly available, if you're
13 sending it to the court, as a way of saying, I'm not going
14 through the usual channels of publicly filing it myself,
15 that form is going on the docket because I think you need to
16 publicly identify yourself. And so I see what my courtroom
17 deputy did as being entirely consistent with my
18 understanding of how this would work.

19 Nonetheless, there appears to have been some level
20 of confusion about what it meant or didn't mean, because I
21 think what the party, from what I can tell of emails to
22 chambers, and obviously emails to chambers are not always
23 the best way to communicate, as we're a transparent
24 proceeding here, just had the name of the individual and the
25 denomination pro se. And so perhaps it was seeking to

1 essentially to create a third category that, well, I only
2 want some of my information out there, and so I'm going to
3 change the rules of engagement.

4 And so I think the idea is that it's not going to
5 work that way. Either you have to do what is required to
6 publicly file something and get that out there, or you're
7 not willing to do that and therefore you won't have
8 something publicly filed on a docket. There is no third
9 option.

10 So with that, we pulled it or we restrained access
11 to it, I think is probably the correct way to say that. But
12 it's an opportunity to revisit so that we can be crystal
13 clear about the terms of engagement; that is, the regular
14 rules apply if you want to file something.

15 Now, I will say in connection with this particular
16 piece of paper, in somebody's decision about whether they
17 want to file something on the docket and make their
18 information that's required to file something on the docket
19 publicly available, it is an objection to the disclosure
20 statement, and it was filed after the disclosure statement
21 was the subject of two hearings, extensive conversation and
22 back and forth and has been approved.

23 So to put it in somewhat blunt fashion, the ship
24 has somewhat sailed on the disclosure statement in terms of
25 the adequacy of the information, and the request to extend

1 the voting period was tied to the request or the arguments
2 about the disclosure statement saying, please extend the
3 voting deadline until after there's additional information
4 provided.

5 So if -- I haven't ruled on this, I'm not ruling
6 on this now, but to the extent it helps for that individual
7 to have a sense of what to do here or not, the adequacy of
8 the information in the disclosure statement has already been
9 the subject of two hearings. The very issues that were
10 discussed in the objection were discussed extensively in the
11 objections that were addressed in the colloquies back and
12 forth among the debtors, the committee, the ad hoc groups
13 and all the other interested parties that filed objections
14 to the disclosure statement, such that at the end of the
15 day, the court has already found that adequate information
16 did exist for purposes of the disclosure statement.

17 So I just mention that all in the interest of full
18 disclosure, to give people as much information as possible
19 to figure out whether they want to proceed publicly with
20 this. But I did want to identify this as an issue and make
21 sure everybody understood the rules of engagement, meaning
22 that if you do want to individually participate and file
23 something, that means you will be subjecting your
24 information to the usual rules of disclosure. And my sense
25 was to file the written form, just so it's very clear for

1 purposes of the court's record, that given the decision that
2 this individual is allowing that information to be out
3 there. But if you don't do it that way, what you could also
4 just do, simply is file it on the docket under the normal
5 rules, which does require you to disclose the appropriate
6 level of identifying information to be deemed essentially a
7 participant, but the usual rules would apply.

8 So my apologies for the length of that speech,
9 just trying to be as clear and give as clear and full an
10 explanation as possible so that folks who are listening in,
11 hopefully this is helpful. Again, we're just trying to make
12 sure everybody's playing by the appropriate set of rules and
13 also that they know what those rules are.

14 So with that, Mr. O'Neal, I'm happy to hear from
15 any party who wants to be heard on this issue. And again, I
16 don't have a monopoly on wisdom, and certainly to the extent
17 that I've misspoken or there's some additional information
18 people think would be helpful to put on the record today for
19 purposes of getting the message out, I'm all ears. So, Mr.
20 O'Neal

21 MR. O'NEAL: Certainly, Your Honor. Thank you
22 very much for raising this. I know there have been some
23 discussions among the various law firms involved, and I
24 think the key point that you're raising is that in addition
25 to filing the actual, what we call the written

1 communication, which is the material that is submitted to
2 the court, the pleading that is, the court believes that it
3 is necessary in addition to file also the form that is the
4 form that says either A, file on the docket or B, do not
5 file on the docket.

6 THE COURT: Well, let me back up for a second. I
7 do see that the form that was checked had a thing for
8 purposes of service, your information will only, and again,
9 this isn't on for today, so we haven't had a chance to sort
10 of fully discuss it.

11 MR. O'NEAL: Certainly.

12 THE COURT: But it talks about information,
13 address, telephone number and email, public available. If
14 such information is in the written communication --

15 MR. O'NEAL: Correct.

16 THE COURT: -- if not, don't include it in the
17 written communication. I guess my thought is I don't want
18 to subject somebody to a higher standard of disclosure than
19 the rules provide. But my thought is that they can't be
20 subjected to a lower one than ordinarily applies. So I'm
21 happy to tweak the form to also say that there is no form.
22 You just need to, essentially, it'll be sent to, not to the
23 court, but to whoever it is, the committee, whoever wants to
24 keep track of this, and that people then need to publicly
25 file something. But they can't send it to chambers without

1 the information that would be necessary to file it and then
2 say, just file what I want and not what I don't want. So
3 the regular rules will apply.

4 MR. O'NEAL: Correct, Your Honor. I think we will
5 confer with the creditors' committee and other interested
6 parties on this. It may be that a revision of the form is
7 necessary in light of Your Honor's comments just now. I
8 think I'd note at the bottom of, and I think this is what
9 you're referring to, at the bottom of the form, there is
10 something suggesting that the information wouldn't be
11 publicly filed, that it's just for contact information
12 versus anything that's in the written communication. So let
13 us confer with the creditors' committee and other interested
14 parties and your chambers, and we'll try to (indiscernible)
15 --

16 THE COURT: All right. Thank you very much.

17 MR. O'NEAL: (indiscernible) with a singular --
18 yeah.

19 THE COURT: Yeah. Again, I don't want to subject
20 people to a higher standard of disclosure, but I don't want
21 to excuse the disclosure that would otherwise be required to
22 file something.

23 MR. O'NEAL: Correct. We understand, Your Honor.

24 THE COURT: So I welcome your thoughts, and I
25 know, if I'm remembering right, that is on -- that form is

1 on for presentment. The presentment of protocol for written
2 communications to the bankruptcy court by creditors is on
3 for tomorrow at 11:00.

4 MR. O'NEAL: That is correct.

5 THE COURT: Yeah. So I'll wait to hear from you
6 all in terms of what you think makes sense in the context of
7 that. Right now, the information of this individual has
8 been restricted. It will remain restricted until we get an
9 unequivocal, one, we figure out what the order should say as
10 to the protocol that's on for presentment tomorrow, and two,
11 until consistent with whatever protocol is entered, that
12 that individual gives an unequivocal message that
13 appropriate information will be shared. But it does mean
14 that his objection currently will not be docketed. And I
15 assume you have a copy of it.

16 MR. O'NEAL: Yes, we do.

17 THE COURT: And so we'll just keep track of it
18 because I don't want it to be inadvertently pushed aside
19 just because it gets lost in the shuffle. So we'll agree to
20 sort of keep it on the radar screen as we work through these
21 issues.

22 MR. O'NEAL: Thank you, Your Honor. We will
23 confer and refer to your chambers.

24 THE COURT: All right. Thank you very much. And
25 so anybody else who wants to chime in on this, you don't

1 necessarily have to. You can have these conversations
2 offline and then get back to me. But I don't certainly want
3 to rob anyone of the opportunity to be heard if they'd like
4 to do so at this time.

5 MR. CRADAVILLE: Your Honor, Glenn Cradaville, and
6 author of the motion that you've been talking about. I
7 didn't expect to take up this much of anybody's time today,
8 but I do appreciate --

9 THE COURT: No, no. That's all right. No need to
10 apologize. Access to the court is your right as a citizen
11 and always happy to have participants involved. And
12 bankruptcy and some of its rules can be -- there are some
13 things in life you can get through with good common sense
14 and intuition. This is not one of them. So it's perfectly
15 fine. We'll make sure to get it as clear as possible so
16 that you know what you're signing up for, and then you can
17 make your decisions as appropriate. So no need to
18 apologize.

19 MR. CRADAVILLE: And if I may, yeah, I appreciate
20 you drawing attention to that clause at the bottom of the
21 form. I certainly did not intend to stay in the shadows
22 when I filed this motion. As one of the creditors invested
23 in Gemini EARN, with money in Genesis, we were very excited
24 these past several months since the court has put in motion
25 a process to get an avenue for us to get our words on the

1 record. And so when this form came out, we were thrilled.
2 Finally, there's an avenue for us to be heard and have our
3 voices heard. I submitted the motion intending for my name,
4 along with the written communication, to be a part of the
5 court record. I appreciate, and I acknowledge that, yes, it
6 came after the decision on the disclosure had already been
7 made. So that part of it may be moot. But that doesn't
8 change the fact that there are a lot of Gemini EARN users
9 who don't have any idea what specifically we will receive in
10 the distributions if this plan is approved. So I would hope
11 that the motion for an extension of the voting period until
12 better clarity can be provided, would still be considered.

13 THE COURT: Well, so let me just comment on that
14 briefly in terms of the procedure. So along the path in the
15 bankruptcy case, there are certain very prominent and
16 critical steps. They're all important, mind you, but
17 certain ones stand out as particularly important milestones.
18 And one of those is a disclosure statement. And what a
19 disclosure statement does has been much discussed over these
20 past months, is, say, for somebody who wants to vote, you
21 are entitled to adequate information about the plan and
22 about its consequences to you and all creditors. And that
23 needs to be teed up by motion. That is the plan proponent
24 here, the debtors, say, Judge, we have a disclosure
25 statement, we have a plan. We want to go forward with the

1 plan of confirmation hearing, and we want to seek approval
2 of the disclosure statement as containing, as they say in
3 the Bankruptcy Code, "adequate information" that satisfies
4 the requirements of applicable law.

5 And so in this case, the debtors actually teed up
6 a disclosure statement, and it was the subject of not one,
7 but two separate hearings that went on, I think, the length
8 of the afternoon in both instances. And so we probably
9 spent a full day of hearings on those issues because they're
10 important. And there was a lot of issues that were raised
11 by a whole host of parties. In fact, at one point, there
12 was a chart by the debtors when they filed a reply to all
13 the objections they received to sort of summarize. There
14 were so many different objections, how many different issues
15 were raised, there was a chart that was appropriate to
16 summarize those objections and sort of where they stood.

17 At the end of that process, however, and that
18 second day of hearing, ultimately, after considering all the
19 issues, a lot of which, frankly, are addressed in your
20 objection, in terms of the adequacy of the information, in
21 terms of recovery, which was a focal point of the
22 conversations about adequate information, I ultimately
23 granted the relief of approving the disclosure statement so
24 that the plan could be submitted, could be circulated, could
25 be voted upon.

1 Now, there's other steps that will go forward.
2 There'll be a plan supplement, and there may be additional
3 developments in the case -- there probably almost invariably
4 will be, that will be publicized between now and the
5 confirmation hearing, which doesn't occur until February.
6 So Valentine's Day, if you would like to lodge it in your
7 memory.

8 So I've already approved the disclosure statement.
9 It doesn't mean the disclosure statement is perfect. That's
10 not the standard in the code. It means that I found it
11 contained adequate information. And just since you're here
12 and you've filed this and raised this issue and to try to be
13 helpful for folks who have similar concerns, one of the
14 things that was discussed in detail is how to describe the
15 recoveries when there are so many different issues that may
16 impact the recoveries. And so there were charts, there were
17 numbers, there were lots of changes to what was included in
18 the disclosure statement and there were a lot of people with
19 differing views as to what adequate disclosure would look
20 like depending on the seat that they were sitting in and
21 whose interest they were representing.

22 And so ultimately, we ended up with something that
23 puts in a lot of what I might call risk factors, that
24 identifies the different things that may happen in the case
25 and outcomes that may happen in litigation that will affect

1 the recovery. And so at the end of the day, it meant that
2 the disclosure, the adequate disclosure, if you are a non-
3 lawyer and a non-bankruptcy lawyer, you may say, well, I'm
4 not quite sure how to understand all these risk factors
5 because it doesn't give me dollars and cents, precise
6 dollars and cents as to what I'm going to get. But that's
7 because there are so many different issues that still have
8 to be decided that will impact that. And some of those are
9 subject to adversary proceedings. And so that's what the
10 disclosure statement does, is identify all those different
11 issues that are currently the subject of pending litigation
12 that is being teed up.

13 And, in fact, I think there was an opposition to
14 something filed this week on one of those adversary
15 proceedings, and so that's why the information in the
16 disclosure statement is not as simple as saying, if you're
17 in class x and you're this kind of creditor, you're going to
18 receive this many cents for every dollar you invested. And
19 it's also complicated by the fact that there's a desire to
20 pay things in kind where possible, which means that you have
21 all sorts of different currencies that are implicated by the
22 plan and the disclosure statement.

23 So this is a very longwinded, roundabout way of
24 saying that if you're looking for a particular dollar value
25 in the disclosure statement as to exactly what you're going

1 to get, you won't find it because it's not known at this
2 time, but is the subject of a lot of factors. And so those
3 are things that are being litigated, and the court will have
4 to decide, absent the settlement. And so that's probably
5 the best answer I can give you on that to sort of try to
6 address what I took to be the thrust of your concerns.

7 And with that, before I hear from you, sir, I
8 thought I would throw it over to Mr. O'Neal to see if he had
9 anything he wanted to add to my explanation, add or amend.

10 MR. O'NEAL: No, Your Honor. Sean O'Neal, again,
11 on behalf of the debtors. I think you've explained it
12 thoroughly and yet concisely.

13 THE COURT: All right. So, as in many things in
14 life, they don't work out exactly as planned. So there is
15 disclosure as often the case in these very large Chapter 11
16 cases. There's a lot of disclosure, but it's a certain kind
17 of disclosure. And again here, there's a lot of disclosure
18 of risk factors because the precise payout is unknowable.
19 It's unusual in the sense it's a cryptocurrency case. So
20 there's a lot of different factors that will play into that,
21 including the in-kind distributions that are talked about.
22 But it is not unheard of or even particularly unusual that
23 the actual outcome of a case for creditors won't be known.

24 So, for example, I presided over the American
25 Airlines case more than a decade ago, and in that case, it

1 was tied to the market, to the stock price that existed at
2 the time, which was also not precisely knowable. So just to
3 give an example that this case is not entirely unique that
4 way. It's sometimes the way cases with a lot of
5 complicating factors and a lot of complicated legal issues
6 will end up working themselves out.

7 So hopefully that explanation is somewhat helpful
8 to you, sir. And obviously, I don't expect necessarily for
9 you to answer me today as to what you want to do with your
10 objection. If you want to think about it and then reach out
11 to the court or reach out to the creditors' committee or
12 somebody else that you might be dealing with who's happy to
13 act as an intermediary, I'm sure Mr. O'Neal's firm would be
14 happy to do that after you get a chance to ponder all this.
15 I know it's a lot of information. There's a lot to think
16 about in this case. So anything further --

17 MR. CRADAVILLE: Thank you, Your Honor.

18 MR. O'NEAL: I'm sorry, Your Honor. I believe you
19 were cut off on your last statement. I couldn't quite --

20 THE COURT: No, I was just asking if he had
21 anything else he wanted to be heard on. And it's always
22 difficult in these virtual hearings to know exactly when
23 somebody wants to speak and when somebody doesn't. But
24 certainly if that individual would like to chime in with
25 anything else, happy to hear it, and I hope my comments are

1 somewhat helpful.

2 And with that, let me ask if anybody, including
3 that individual, wishes to be heard in connection with this
4 particular issue.

5 All right. Hearing nobody else, thank you all for
6 being here virtually and your patience as we work through
7 some technical issues, speaking of technical issues, and I
8 will wait to hear from the debtors and the other
9 professionals in terms of trying to work our way through
10 this form. And so I do thank the individual who filed this
11 objection for, perhaps this was not your intent, but you're
12 actually serving as a very helpful canary in the coal mine
13 for a test run for us to work through these issues to make
14 sure that by the time we get to confirmation we've got any
15 bugs in the system worked out and everybody is crystal clear
16 on how to proceed.

17 So it's very helpful. We're always trying to make
18 the system better, so this is a chance for us to improve it.
19 And what I will wait for is revised proposed order and
20 proposed consent form. If it's helpful to have a conference
21 on the issue, I'd be happy to do that, too. I'll be guided
22 by what the interested parties would like to do, and we'll
23 wait to hear from you on that.

24 MR. O'NEAL: Thank you, Your Honor. We will
25 confer and revert, and we really appreciate your time and

1 also we appreciate the pleading that was filed. So thank
2 you.

3 THE COURT: Yeah. Absolutely. Absolutely. All
4 right. With that, I'd just like to wish everybody very
5 happy holidays to you and your families. Be well. As a
6 recent recipient of a second bout of COVID, try to avoid
7 that. It's not a very good holiday gift. So be happy and
8 healthy, and we will see you in the new year. I believe
9 it's January 3rd.

10 MR. O'NEAL: Correct, Your Honor. That's correct.

11 THE COURT: All right. Thank you very much.

12 MR. O'NEAL: Thank you.

13 THE COURT: Be well.

14 MR. O'NEAL: Bye-bye.

15 (Whereupon these proceedings were concluded at
16 3:06 PM)

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RULINGS

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Doc. #9 Debtor's Motion for Entry of

(I) Consent Judgment Against the DCG

Parties and (II) Order Authorizing,

to the extent necessary, GGC to Take

Actions in Furtherance of the Partial

Repayment Agreement Pursuant to Sections

105(a) and 363(b) of the Bankruptcy

Code, or, in the alternative,

Bankruptcy Rule 9019(a) 17 22

Adversary Proceeding 23-01169-shl

Doc. #11 Debtor's Motion for Entry of

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: December 27, 2023